

The ALJ found that claimant sustained her burden of proof, thereby establishing her entitlement to a 61 percent work disability award as a result of a compensable chemical exposure that aggravated her preexisting asthma. The ALJ concluded that the preponderance of the evidence established that claimant made the required good-faith effort to find appropriate alternative employment and as such, no wage would be imputed to her, thus leaving her with a 100 percent wage loss. When that figure is averaged with the undisputed 22 percent task loss, the result is the 61 percent awarded by the ALJ.

The respondent requests review of the issue of "good faith" and whether claimant has made a reasonable effort to seek post injury employment. Put succinctly, respondent believes that claimant's efforts to seek post injury employment were nominal and not substantial enough to qualify as good-faith and not reasonable enough so as to avoid an imputed wage.

In contrast, claimant argues that she has made a good-faith effort to find employment since being released from care with the restrictions that resulted from her occupational injury. Claimant contends that respondent has failed to acknowledge the lack of jobs in the area she lives in, and that respondent has made no effort to verify that she had been attempting to find employment. Thus, claimant maintains the ALJ's Award should be affirmed in all respects.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs, the Board finds the ALJ's Award should be affirmed.

The Board agrees with and adopts as its own the findings and conclusions stated in the ALJ's Award. The evidence proves that claimant sustained a compensable injury when she was exposed to an insecticide containing the chemical Pyrethrin while in respondent's employ on May 31, 2002. The exposure caused her to experience a "major" asthma attack, forcing her from the workplace. Claimant has not returned to work since the date of her accident and it remains undisputed that respondent cannot accommodate the permanent restrictions imposed upon claimant.

Respondent referred claimant to Dr. Gerald Kerby, a pulmonologist at the University of Kansas Medical Center for an evaluation. Although the evaluation occurred in January of 2003, the report was tendered to claimant at the end of March 2003. He offered no further treatment suggestions but did advise claimant to avoid strenuous exertion and environments where she would be exposed to respiratory irritants and extremes in temperatures.

As of April 2003, claimant began looking for work within her own community of Plainville as well as in the surrounding towns of Hays and Stockton. Her job search was not limited to any particular job or type of work and up to the time of the regular hearing, included contact with 27 prospective employers, averaging two employment contacts per week.

The ALJ stated as follows:

The Court concludes that the preponderance of the evidence establishes that Claimant has made the required good-faith effort to find alternative employment.

The only vocational testimony before the Court indicates that the number of potential employer's in Claimant's rural geographic area is limited. While the Court would ordinarily expect a Claimant to make significantly more than two job contacts per week, if there are a limited number of prospective employers, repeated visits to those same employers each week becomes futile. Respondent has provided no affirmative evidence to counter Claimant's testimony.¹

The Board concurs with the ALJ's reasoning and findings. The "good faith" analysis is necessarily fact dependent. Under these facts and circumstances, the Board believes claimant's efforts fulfill the "good faith" requirement imposed under Kansas law. Accordingly, the Board affirms the ALJ's Award in all respects.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Bruce E. Moore dated January 16, 2004, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of April 2004.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Jeffrey E. King, Attorney for Claimant
Jeffery R. Brewer, Attorney for Respondent and its Insurance Carrier
Bruce E. Moore, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

¹ ALJ Award (Jan. 16, 2004) at 6.